

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	Civil Case No. 16-13172
)	
Plaintiff,)	Judge Thomas L. Ludington
)	
v.)	Magistrate Judge Patricia T. Morris
)	
JOHN WAGSTER,)	
STATE OF MICHIGAN, IOSCO)	
COUNTY, CHARTER TOWNSHIP OF)	
AUSABLE, LVNV FUNDING LLC,)	
and JERRY L. SEWELL,)	
)	
Defendants.)	
_____)	

STIPULATED ORDER REGARDING LIEN PRIORITY

The plaintiff United States of America and the defendant State of Michigan stipulate and agree to the following:

Background

1. On September 1, 2016, the United States filed this action to reduce to judgment the unpaid federal tax liabilities of defendant John Wagster and to enforce the resulting federal tax liens against real property located at 3136 N. US Highway 23, Oscoda, Michigan 48750 (the “Property”). (Docket No. 1.)

2. The United States subsequently amended its Complaint, in part, to add the Charter Township of AuSable as a party because it may claim an interest in the Property, and to remove Oscoda Township as a party. (Docket No. 3.)

3. The United States named the State of Michigan as a party in this action pursuant to 26 U.S.C. § 7403(b), because it claims an interest in the Property by virtue of Notices of State Tax Liens filed with respect to John Wagster in the Iosco County Register of Deeds Office.

Stipulation as to Distribution of Sale Proceeds

4. The undersigned parties agree and stipulate as to the priorities of their interests in the Property, and should the Property be sold by order of this Court, the proceeds shall be distributed as follows:

- a. First, to the costs of sale, including realtor commissions (not to exceed 6% of the sale price) or auction fees, then to any property or real estate taxes, interest and permissible fees due to Iosco County or the Charter Township of AuSable at the time of the closing, pursuant to 26 U.S.C. § 6323.
- b. Second, to the United States of America and to the State of Michigan in accordance with the priority of their respective liens as set forth in paragraph 7, below.
- c. Any proceeds remaining following the satisfaction of the United States' and the State of Michigan's respective tax liens shall be distributed to John Wagster.

Respective Priorities of State and Federal Tax Liens

5. The Michigan tax liens and the United States' federal tax liens attach to the Property against which the United States seeks to enforce its liens in this action.

6. The relative priority of state and federal tax liens “depends on the time [the liens] attached to the property in question and became choate.” *United States v. City of New Britain*, 347 U.S. 81, 86 (1954). Here, the state and federal tax liens became choate on assessment.

7. Based on the assessment dates, the United States and the State of Michigan stipulate to the following priority among their respective tax liens:

Sovereign	Tax Type	Tax Period / Assessment Number	Assessment Date
United States	Income	2002	Feb. 2, 2006
United States	Income	2005	May 1, 2006
United States	Income	2003 2004	Jan. 1, 2007
United States	Income	2006	May 28, 2007
Michigan	Income	P180478	July 27, 2007
United States	Income	2007	Mar. 16, 2009
Michigan	Income	Q737832 Q737833	Apr. 3, 2009
Michigan	Income	R571528 R571529	Dec. 11, 2009
United States	Income	2008	Dec. 28, 2009
United States	Income	2009	May 31, 2010
Michigan	Income	R830464	June 8, 2010

Sovereign	Tax Type	Tax Period / Assessment Number	Assessment Date
		R830465	
Michigan	Income	S125542	July 23, 2010
Michigan	Income	S406343	Jan. 10, 2011
United States	Income	2010	May 30, 2011
Michigan	Income	TH88054	Oct. 4, 2011
Michigan	Income	TK96321	Apr. 27, 2012
United States	Income	2011	May 28, 2012
Michigan	Income	TO3371	July 20, 2012
Michigan	Withholding	R677073 S090130 TA56423 TD64988 TE23742 TE75354	Oct. 18, 2012
Michigan	Income	TR43502	Jan. 4, 2013
Michigan	Withholding	TF76639 TH45759 TI54621 TJ97433 TJ97434 TK50898 TL11753 TL70171 TM44149 TM97474 TN53481 TO50482 TP60797 TQ37159 TR28431	Aug. 1, 2013
United States	Income	2012	Dec. 9, 2013

Sovereign	Tax Type	Tax Period / Assessment Number	Assessment Date
Michigan	Income	UB43741	Feb. 14, 2014
United States	Income	2013	June 2, 2014
Michigan	Income	UE03011	July 24, 2014
Michigan	Income	UE03010	Oct. 2, 2014
Michigan	Income	UG96790	Jan. 2, 2015
United States	Income	2014	June 8, 2015
Michigan	Income	UK70767	June 25, 2015

IT IS SO ORDERED:

Dated: February 10, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

So agreed to stipulation regarding priority of lien holders:

For Plaintiff United States of America:

DAVID A. HUBBERT
Acting Assistant Attorney General
U.S. Department of Justice, Tax Division

/s/ Lauren E. Hume
LAUREN E. HUME
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
Tel: 202-307-2279
Fax: 202-514-5238
Lauren.E.Hume@usdoj.gov

LOCAL COUNSEL:
BARBARA L. MCQUADE
United States Attorney

PETER A. CAPLAN
Assistant U.S. Attorney

211 W. Fort Street, Ste. 2001
Detroit, MI 48226
(313) 226-9784
P30643
Peter.Caplan@usdoj.gov

For Defendant State of Michigan:

BILL SCHUETTE
Michigan Attorney General

/s/ Moe Freedman
MOE FREEDMAN
Assistant Attorney General
Attorneys for Michigan Dept. of
Treasury
Revenue & Collections
3030 W. Grand Blvd., Ste. 10-400
Detroit, MI 48202
(313) 456-0140
(313) 456-0291 Fax
FreedmanM1@michigan.gov

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 10, 2017.

s/Kelly Winslow for
MICHAEL A. SIAN, Case Manager

Certificate of Service

I hereby certify that on February 8, 2017, I electronically filed the foregoing document with the Court via the Proposed Order Portal, and I hereby certify that on the same date I have emailed the document to the following CM/ECF participant:

Moe Freedman, Attorney for the State of Michigan, at FreedmanM1@michigan.gov

I further certify that I have mailed the document by United States Postal Service first-class mail to the following non-CM/ECF participants:

John Wagster
P.O. Box 489
Oscoda, MI 48750-0489

Charter Township of AuSable
311 Fifth Street
Au Sable, MI 48750

Iosco County
c/o Elite Shellenbarger, Iosco County Treasurer
422 Lake Street, P.O. Box 538
Tawas City, MI 48763

LVNV Funding LLC
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Jerry Sewell
834 Inman Village Parkway, NE
Suite 220
Atlanta, GA 30307

/s/ Lauren E. Hume
LAUREN E. HUME
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
Tel.: 202-307-2279
Fax: 202-514-5238
Lauren.E.Hume@usdoj.gov